

necessary to create the contract occurred in Missouri when claimant passed a health assessment.

The only issue before the Appeals Board on this review is a factual one:

Did the claimant and respondent create the employment contract during the telephone conversation between them on May 5, 1989, or was the creation of the contract contingent upon claimant passing a health assessment on May 16, 1989, which was approximately nine days after she began working for the respondent?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent as the result of a series of microtraumas that occurred from March 10, 1992, through March 31, 1993.
- (2) Respondent operates a medical center in Kansas City, Missouri, where claimant applied for work by completing a job application in April 1989. At that time, claimant lived in Kansas City, Kansas.
- (3) After completing her job application, claimant was interviewed by both the personnel and pharmacy departments and advised respondent would contact her if she were selected for the job.
- (4) On May 5, 1989, one of respondent's pharmacy supervisors telephoned claimant at her residence in Kansas City, Kansas, to advise she had been selected for employment. During that telephone conversation, claimant accepted respondent's job offer:

She said that they would like for me to come to work with them if I would accept the job. I told them yes I would. She told me I would be receiving some paperwork from personnel and that I needed to report to Truman Monday morning.

- (5) After the telephone conversation, respondent mailed claimant a letter dated May 5, 1989, to confirm the medical center's job offer. Although claimant had spoken with a pharmacy supervisor, the letter was signed by JoAnn Schumacher, respondent's senior personnel services coordinator. The letter indicated the job offer was contingent upon claimant passing a health assessment but also directed her to report to work on May 8, 1989:

This is to confirm Truman Medical Center's job offer to you for the position of part time Pharmacy Assistance [sic], every other weekend Saturday/Sunday, 8:00 a.m. - 4:30 p.m. beginning May 8, 1989. Your rate of pay will be \$5.58/hour. . . .

As we discussed, this job offer is contingent upon your successful completion of the pre-employment health assessment. Your health assessment has been scheduled on May 16, 1989 at 9:00 a.m. with Mark Reynolds, R.N., Employee Health Nurse. The Employee Health Office is located on the 4th Floor, Gold Clinic. Please complete the enclosed health assessment form and bring it with your [sic] to this health assessment.

(6) Claimant testified the job respondent offered her in the May 5, 1989, telephone conversation was not contingent upon any occurrences. Respondent did not present any witnesses to refute that testimony.

(7) Claimant reported to work on May 8, 1989, and began her employment with respondent. On May 16, 1989, claimant successfully completed her health assessment. Respondent paid claimant for the time she was at work beginning May 8, 1989.

CONCLUSIONS OF LAW

The Appeals Board finds the employment contract was created during the May 5, 1989, telephone conversation and, therefore, the contract was made in Kansas. The following factors weighed heavily in reaching this conclusion.

First, claimant's testimony regarding what was said in the May 1989 telephone conversation is credible. Second, the only evidence that controverts claimant's testimony that the job offer was unconditional is the medical center's May 1989 letter, but it was written by someone who was not a party to the conversation. Third, claimant began working at the medical center on May 8, 1989, before the health assessment was administered. Surely respondent would not seriously argue the existence of the employment relationship had claimant been injured while working for the respondent before the health assessment.

Because claimant is entitled to benefits under the Kansas Workers Compensation Act, this proceeding should be remanded to the Administrative Law Judge to determine the remaining issues.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 24, 1996, entered by Administrative Law Judge Steven J. Howard

should be, and hereby is, reversed and this proceeding is remanded to the Administrative Law Judge to determine the remaining issues accordingly.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kathleen M. Lynch, Kansas City, KS
Joseph C. McMillan, Kansas City, MO
Larry Hoffman, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director